House of Representatives

General Assembly

File No. 231

February Session, 2002

Substitute House Bill No. 5639

House of Representatives, March 28, 2002

The Committee on Human Services reported through REP. GERRATANA of the 23rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING LOWER DRUG COSTS FOR CONSUMERS AND THE STATE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 17b-490 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2002*):

As used in sections 17b-490 to 17b-498, inclusive, as amended by this act:

(a) "Pharmacy" means a pharmacy licensed under section 20-594 or a pharmacy located in a health care institution, as defined in subsection (a) of section 19a-490, which elects to participate in Part A and Part B of the program;

(b) "Prescription drugs" means (1) legend drugs, as defined in section 20-571, (2) any other drugs which by state law or regulation require the prescription of a licensed practitioner for dispensing, except products prescribed for cosmetic purposes as specified in

regulations adopted pursuant to section 17b-494, as amended by this act, and on and after September 15, 1991, diet pills, smoking cessation gum, contraceptives, multivitamin combinations, cough preparations and antihistamines, and (3) insulin, insulin syringes and insulin needles;

(c) "Reasonable cost" means the cost of the prescription drug determined in accordance with the formula adopted by the Commissioner of Social Services in regulations for medical assistance purposes plus a dispensing fee equal to the fee determined by said commissioner for medical assistance purposes;

(d) "Resident" means a person legally domiciled within the state for a period of not less than one hundred eighty-three days immediately preceding the date of application for inclusion in Part A or Part B of the program. Mere seasonal or temporary residences within the state, of whatever duration, shall not constitute domicile;

(e) "Disabled" means a person over eighteen years of age who is receiving disability payments pursuant to either Title 2 or Title 16 of the Social Security Act of 1935, as amended;

(f) "Commissioner" means the Commissioner of Social Services;

(g) "Income" means adjusted gross income as determined for purposes of the federal income tax plus any other income of such person not included in such adjusted gross income minus Medicare Part B premium payments. The amount of any Medicaid payments made on behalf of such person or the spouse of such person shall not constitute income;

(h) "Program" means the Connecticut Pharmaceutical Assistance Contract to the Elderly and the Disabled Program otherwise known as ConnPACE. The program shall consist of Part A and Part B. Part B shall replace the plan for ConnPACE Part B which was approved by the General Assembly pursuant to section 29 of public act 00-2 of the June special session;

(i) "Pharmaceutical manufacturer" means any entity holding legal title to or possession of a national drug code number issued by the federal Food and Drug Administration;

(j) "Average manufacturer price" means the average price paid by a wholesaler to a pharmaceutical manufacturer, after the deduction of any customary prompt payment discounts, for a product distributed for retail sale.

Sec. 2. Section 17b-491 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2002*):

(a) There shall be a "Connecticut Pharmaceutical Assistance Contract to the Elderly and the Disabled Program", Part A and Part B, which shall be within the Department of Social Services. **[**The**]** Part A of the program shall consist of payments by the state to pharmacies for the reasonable cost of prescription drugs dispensed to eligible persons minus a copayment charge, effective July 1, 1993, of twelve dollars for each prescription dispensed under Part A of the program. The pharmacy shall collect the copayment charge from the eligible person at the time of each purchase of prescription drugs, and shall not waive, discount or rebate in whole or in part such amount. Part B of the program shall consist of a drug benefit that allows recipients to purchase prescriptions at the average wholesale price reduced by twelve per cent or other such price as may be calculated under the Medicaid program. The state shall pay the pharmacist a participation incentive fee at a rate of not less than one hundred fifty per cent of the Medicaid dispensing fee. The state shall receive the applicable Medicaid rebate from the pharmaceutical drug companies and shall apply the rebates to fully offset the costs of the dispensing fee provided, if the Title XIX waiver under section 9 of this act is granted, the state shall contribute not less than one dollar for each prescription under this program. The waiver shall include the full range of prescription drugs provided under the Medicaid program.

(b) Notwithstanding the provisions of subsection (a) of this section, effective September 15, 1991, payment by the state to a pharmacy

under Part A of the program may be based on the price paid directly by a pharmacy to a pharmaceutical manufacturer for drugs dispensed under the program minus the copayment charge, plus the dispensing fee, if the direct price paid by the pharmacy is lower than the reasonable cost of such drugs.

(c) Effective September 15, 1991, reimbursement to a pharmacy for prescription drugs dispensed under Part A of the program shall be based upon actual package size costs of drugs purchased by the pharmacy in units larger than or smaller than one hundred.

(d) The commissioner shall establish an application form whereby a pharmaceutical manufacturer may apply to participate in the program. Participation in the program shall require participation in both Part A and Part B. Upon receipt of a completed application, the department shall issue a certificate of participation to the manufacturer. Participation by a pharmaceutical manufacturer shall require that the department shall receive a rebate from the pharmaceutical manufacturer. Rebate amounts for brand name prescription drugs shall be equal to those under the Medicaid program. Rebate amounts for generic prescription drugs shall be established by the commissioner, provided such amounts may not be less than those under the Medicaid program. A participating pharmaceutical manufacturer shall make quarterly rebate payments to the department for the total number of dosage units of each form and strength of a prescription drug which the department reports as reimbursed to providers of prescription drugs, provided such payments shall not be due until thirty days following the manufacturer's receipt of utilization data from the department including the number of dosage units reimbursed to providers of prescription drugs during the quarter for which payment is due.

(e) All prescription drugs of a pharmaceutical manufacturer that participates in the program pursuant to subsection (d) of this section shall be subject to prospective drug utilization review. Any prescription drug of a manufacturer that does not participate in the

program shall not be reimbursable, unless the department determines the prescription drug is essential to program participants.

Sec. 3. Section 17b-492 of the general statutes, as amended by section 22 of public act 01-2 of the June special session and section 129 of public act 01-9 of the June special session, is repealed and the following is substituted in lieu thereof (*Effective July 1, 2002*):

(a) Eligibility for participation in Part A of the program shall be limited to any resident (1) who is sixty-five years of age or older or who is disabled, (2) (A) whose annual income, if unmarried, is less than thirteen thousand eight hundred dollars, except after April 1, 2002, such annual income is less than twenty thousand dollars, or whose annual income, if married, when combined with that of the resident's spouse is less than sixteen thousand six hundred dollars, except after April 1, 2002, such combined annual income is less than twenty-seven thousand one hundred dollars, or (B) in the event the program is granted a waiver to be eligible for federal financial participation, then, after July 1, 2002, whose annual income, if unmarried, is less than twenty-five thousand eight hundred dollars, or whose annual income, if married, when combined with that of the resident's spouse is less than thirty-four thousand eight hundred dollars, (3) who is not insured under a policy which provides full or partial coverage for prescription drugs once a deductible amount is met, and (4) on and after September 15, 1991, who pays an annual twenty-five-dollar registration fee to the Department of Social Services. Effective January 1, 2002, the commissioner shall commence accepting applications from individuals who will become eligible to participate in the program as of April 1, 2002. On January 1, 1998, and annually thereafter, the commissioner shall, by the adoption of regulations in accordance with chapter 54, increase the income limits established under this subsection over those of the previous fiscal year to reflect the annual inflation adjustment in Social Security income, if any. Each such adjustment shall be determined to the nearest one hundred dollars.

(b) Eligibility for participation in Part B of the program shall be limited to any resident who: (1) Is sixty-five years of age or older or who is disabled, and whose annual income, if unmarried, is not more than four hundred per cent of the federal poverty level for a one person household or whose annual income, if married, when combined with that of such resident's spouse is not more than four hundred per cent of the federal poverty level for a two person household and does not qualify for Part A of the program; or (2) is under sixty-five years of age and is not insured under a policy that provides full or partial coverage for prescription drugs once a deductible amount is met and whose annual income, if unmarried, is not more than three hundred per cent of the federal poverty level for a one person household, or whose annual income, if married, when combined with that of such resident's spouse is not more than three hundred per cent of the federal poverty level for a two person household. Any person who participates in Part B of the program shall pay an annual registration fee of twenty-five dollars to the Department of Social Services. In determining income eligibility under this subdivision, annual income shall be reduced by the amount of the verified annual prescription costs for any applicant. On or before January 1, 2003, and annually thereafter, the commissioner shall adopt regulations, in accordance with chapter 54, to increase the income limits established under this subsection over those for the previous fiscal year to reflect the annual inflation adjustment in Social Security income, if any, or any change in the federal poverty levels, whichever is higher. Each adjustment shall be determined to the nearest one hundred dollars.

[(b)**]** (c) Payment for a prescription under the program shall be made only if no other plan of insurance or assistance is available to an eligible person for such prescription at the time of dispensing. The pharmacy shall make reasonable efforts to ascertain the existence of other insurance or assistance.

[(c)**]** (d) Any eligible resident who (1) is insured under a policy which provides full or partial coverage for prescription drugs, and (2)

expects to exhaust such coverage, may apply to participate in the program prior to the exhaustion of such coverage. Such application shall be valid for the applicable income year. To be included in the program, on or after the date the applicant exhausts such coverage, the applicant or the applicant's designee shall notify the department that such coverage is exhausted and, if required by the department, shall submit evidence of exhaustion of coverage. Not later than ten days after an eligible resident submits such evidence, such resident shall be included in Part A or Part B of the program. The program shall (A) cover prescriptions that are not covered by any other plan of insurance or assistance available to the eligible resident and that meet the requirements of this chapter, and (B) retroactively cover such prescriptions filled after or concurrently with the exhaustion of such coverage. Nothing in this subsection shall be construed to prevent a resident from applying to participate in Part A or Part B of the program as otherwise permitted by this chapter and regulations adopted pursuant to this chapter.

[(d)**]** (e) The Commissioner of Social Services may adopt regulations in accordance with the provisions of chapter 54 to implement the provisions of subsection **[**(c)**]** (d) of this section. Such regulations may provide for the electronic transmission of relevant coverage information between a pharmacist and the department or between an insurer and the department in order to expedite applications and notice.

Sec. 4. Section 17b-493 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2002*):

A pharmacist shall, except as limited by subsection (c) of section 20-619 and section 17b-274, substitute a therapeutically and chemically equivalent generic drug product for a prescribed drug product when filling a prescription for an eligible person under Part A or Part B of the program.

Sec. 5. Section 17b-494 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2002*):

The Commissioner of Social Services shall adopt regulations, in accordance with the provisions of chapter 54, to establish (1) a system for determining eligibility and disqualification under Part A and Part B of the program, including provisions for an identification number and a renewable, nontransferable identification card; (2) requirements for the use of the identification number and card by the pharmacy and the eligible person; (3) a system of payments; (4) limitations on the maximum quantity per prescription which shall not exceed a thirty-day supply or one hundred twenty oral dosage units whichever is greater; (5) requirements as to records to be kept by the pharmacy, including patient profiles; (6) products prescribed for cosmetic and other purposes which shall not be covered under the program; and (7) such other provisions as are necessary to implement the provisions of sections 17b-490 to 17b-495, inclusive, as amended by this act.

Sec. 6. Section 17b-495 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2002*):

(a) The commissioner may enter into an agreement with a fiscal intermediary **[**which**]** that may be an agency of the state, or a person, firm or public or nonprofit corporation, for the administration of the whole or any part of Part A and Part B of the program. Any such contract shall be subject to the provisions of sections 4a-57 and 4a-59, as amended, except that preference shall be given to persons, firms or corporations doing business in the state.

(b) The contract shall require the fiscal intermediary to submit quarterly reports to the commissioner on the operation of Part A and Part B of the program, including financial and utilization statistics as to drug use by therapeutic category, actuarial projections, an outline of problems encountered in the administration of the program and suggested solutions to the same and any recommendations to enhance the program.

(c) The commissioner shall verify the propriety and reasonableness of payments to providers, through field audit examinations and other reasonable means, to the extent possible within available

appropriations. The commissioner shall submit an annual report, on or before February first of each year, to the Secretary of the Office of Policy and Management and the chairpersons of the joint standing committee of the General Assembly having cognizance of matters relating to appropriations and the budgets of state agencies outlining the program for carrying out such verifications and including the results of such verifications.

(d) The commissioner shall submit quarterly reports, within thirty days after the end of each fiscal quarter, to the Governor and the chairpersons of the joint standing committees of the General Assembly having cognizance of matters relating to appropriations and the budgets of state agencies and public health. The report shall include a copy of the most recent report of the fiscal intermediary, if any, and (1) the number of consumers eligible for Part A and Part B of the program, (2) the number of consumers utilizing Part A and Part B of the program, (3) an outline of and a report on the educational outreach program, (4) the number of appeals, (5) an outline of problems encountered in the administration of Part A and Part B of the program and suggested solutions and any recommendations to enhance Part A and Part B of the program.

Sec. 7. Section 17b-496 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2002*):

Any person aggrieved by any action of the commissioner in connection with the administration of Part A or Part B of the program shall have a right to a hearing before the commissioner in accordance with the provisions of chapter 54.

Sec. 8. Section 17b-498 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2002*):

The Commissioner of Social Services shall undertake an educational outreach program to make known the provisions of Part A and Part B of the program to the public, with emphasis on reaching the elderly and the disabled in the state through the various local and state-wide

agencies and organizations concerned with the elderly and the disabled, and to all pharmacies and physicians in the state.

Sec. 9. (NEW) *(Effective July 1, 2002)* The Commissioner of Social Services shall submit an application for a federal waiver under Title XIX for the purposes of conducting the ConnPACE Part B program pursuant to sections 17b-490 of the general statutes, as amended by this act, 17b-491 of the general statutes, as amended by this act, 17b-492 to 17b-496, inclusive, of the general statutes, as amended by this act, and 17b-498 of the general statutes, as amended by this act.

Sec. 10. (NEW) *(Effective July 1, 2002)* (a) There is established an Affordable Prescription Drug Board. The board shall consist of: (1) Three members appointed by the speaker of the House of Representatives, at least one of whom is a pharmacist licensed in Connecticut; (2) three members appointed by the president pro tempore of the Senate, at least one of whom is a representative of a pharmaceutical company with manufacturing operations in Connecticut; (3) three members appointed by the majority leader of the House of Representatives, at least one of whom is a representative of a hospital licensed in Connecticut; (4) three members appointed by the minority leader of the House or Representatives, at least one of whom is a physician licensed in Connecticut; (5) three members appointed by the majority leader of the Senate, at least one of whom is a representative of a health insurer licensed in Connecticut; (6) three members appointed by the minority leader of the Senate, at least one of whom is a health care provider other than a physician licensed in Connecticut with prescriptive authority; (7) two members appointed by the Governor; and (8) the Commissioner of Social Services, or the commissioner's designee. At least one member appointed by each person pursuant to this subsection shall be a consumer that purchases prescription drugs and who is not a health care provider and pharmacist and who is not employed or was not formerly employed by any pharmaceutical drug manufacturer or distributor or pharmacy. At the first meeting of the board, and annually thereafter, the members shall elect two members to serve as cochairpersons of the board. The

Department of Social Services shall provide such staff as is necessary for the performance of the functions and duties of the board.

(b) Not later than January 1, 2003, and annually thereafter, the board shall publish the wholesale price, the Canadian wholesale price, the federal Supply Schedule price, retail prices in Connecticut, the prices charged to other governmental agencies, health care facilities, health insurance companies and other purchasers, and such other information as the board deems relevant for the fifty prescription drugs with the highest sales volume sold through the ConnPACE Part A and Part B programs.

(c) The board shall distribute the information gathered pursuant to subsection (b) of this section to all retail pharmacies in this state and the Commissioner of Social Services shall post such schedule on the Department of Social Services' Internet web site.

(d) The Commissioner of Social Services, in consultation with the Commissioner of Consumer Protection shall submit a report to the board and the General Assembly in accordance with section 11-4a of the general statutes not later than September 1, 2002, and annually thereafter, detailing state options for lowering drug prices for the state of Connecticut, businesses and consumers. Such report shall detail major strategies used in other states to lower drug prices and the effect of such strategies on health access, including, but not limited to, negotiation of supplemental Medicaid rebates, bulk purchasing of medications in-state or through multi-state pools, accessing Medicaid rebates for consumers and pharmacies through federal Medicaid waivers, variations of pharmacy assistance programs and benefits offered, expansion of state and private consumer assistance and discount programs, strategies used to access federal pricing schedules and expand programs established pursuant to 42 USC 256b, and local programs to provide discounts to subsets of residents, and any other findings and recommendations as the Commissioner of Social Services deems appropriate. Such report shall include comment on available processes for public input for each strategy highlighted. The board

with the chairs and ranking members of the committees of cognizance shall conduct a public hearing before the commencement of the legislative session to evaluate the options contained in the report.

Sec. 11. (NEW) *(Effective July 1, 2002)* (a) Not later than October 1, 2002, the Commissioner of Public Health shall request proposals to award one or more grants to community health centers, free health care clinics and other nonprofit organizations to educate and assist state residents to purchase prescription drugs at the lowest possible cost. Grants may be awarded under this section for: (1) Identifying and organizing pharmacies, clinics, physicians and other health care providers who can assist state residents in the prescribing and purchasing of prescription drugs at the lowest possible price; (2) assisting and organizing the communications, prescriptions, purchasing, transportation and other activities necessary for state residents to purchase prescription drugs; and (3) any other proposal designed to educate state residents about low cost prescription drug opportunities at the state or federal level or to permit state residents to purchase prescription drugs at the lowest possible price.

(b) The commissioner shall review proposals submitted under subsection (a) of this section and, after the review and upon the recommendation of the Affordable Prescription Drug Board, established pursuant to section 10 of this act, may award one or more grants under this section, provided: (1) All such proposals shall be submitted to the commissioner not later than October 1, 2002; (2) any proposal for which a grant is awarded shall be implemented not later than December 31, 2002, and shall be approved for a duration of not less than one year; and (3) such proposals shall ensure that any prescription drug purchase transaction is approved by a retail pharmacist in this state, who shall receive a fee for approval equal to the Medicaid dispensing fee.

Sec. 12. (NEW) *(Effective July 1, 2002)* On or before March 31, 2003, and annually thereafter, any manufacturer of prescription drugs which were sold in this state during the preceding calendar year shall file a

report with the Affordable Prescription Drug Board established pursuant to section 10 of this act. Such report shall disclose the aggregate amount of expenses for advertising in newspapers and on radio and television stations based in Connecticut and promotions to health care providers, whose offices are based in Connecticut, of prescription drugs for the preceding calendar year. For purposes of this section, promotions include free samples, media events, gifts, trips, conferences or meals. The annual report shall list expenses for promotions by such categories and such other categories as the manufacturer may determine appropriate. No later than thirty days after receipt of such report, the board shall file such report with the joint standing committees of the General Assembly having cognizance of matters relating to public health and human services. The Affordable Prescription Drug Board shall prescribe the form for such report for use by such manufacturers.

Sec. 13. (NEW) *(Effective July 1, 2002)* (a) As used in this section: (1) "Pharmaceutical marketing" means engaging in pharmaceutical detailing, promotional activities or other marketing of prescription drugs in this state to any hospital, nursing home, health care provider, pharmacist, health benefit plan administrator or any other person authorized to prescribe, dispense or purchase prescription drugs, but does not include a wholesale drug distributor or the distributor's representative who promotes or otherwise markets the services of the wholesale drug distributor in connection with a prescription drug. (2) "Pharmaceutical manufacturer" means any entity that is engaged in the production, preparation, propagation, compounding, conversion or processing of prescription drugs, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or any entity engaged in the packaging, repackaging, labeling, relabeling or distribution of prescription drugs, but does not include a wholesale drug distributor or pharmacist.

(b) No person employed by or under contract to represent a pharmaceutical manufacturer, may engage in pharmaceutical marketing unless such person and the pharmaceutical manufacturer

have obtained a license from the Commissioner of Consumer Protection. The commissioner may deny, suspend or revoke any license if such person has violated any provision of this section or regulations adopted pursuant to this section. The commissioner may charge an annual fee for such license of five hundred dollars.

(c) Any person licensed pursuant to this section shall: (1) Not engage in any unfair or deceptive trade practice under subsection (a) of section 42-110b of the general statutes; (2) disclose to the Commissioner of Consumer Protection on or before July 1, 2003, and annually thereafter, the value, nature and purpose of any gifts, fees or financial transaction with any hospital, nursing home, health care provider, pharmacist, health benefit plan administrator or any other person authorized to prescribe, dispense, or purchase prescription drugs in connection with pharmaceutical marketing; (3) disclose upon request to any person any information that such licensed person may have concerning the financial and medical risks, costs and benefits of each marketed prescription drug and the relative risks, costs and benefits of each prescription drug compared to other less expensive prescription drugs within the same therapeutic class.

(d) The Commissioner of Consumer Protection shall adopt regulations, in accordance with chapter 54 of the general statutes, to implement the provisions of this section.

(e) Any person who violates the provisions of subsection (b) of this section shall be subject to a civil penalty of not more than ten thousand dollars. Upon request of the commissioner, the Attorney General may bring an action in superior court to collect such fine.

(f) Any person who violates the provisions of subsection (c) of this section shall be subject to a civil penalty of not more than five thousand dollars. Upon request of the commissioner, the Attorney General may bring an action in superior court to collect such fine.

Sec. 14. (NEW) *(Effective July 1, 2002)* The state of Connecticut shall participate in the Northeast Legislative Association on Prescription

Drug Pricing. The representatives from the state to the Northeast Legislative Association on Prescription Drug Pricing shall be as follows: The cochairpersons from the Affordable Prescription Drug Board established pursuant to section 10 of this act; two persons appointed by the president pro tempore of the Senate, one of whom shall be the recommendation of the minority leader of the Senate; and two persons appointed by the speaker of the House of Representatives, one of whom shall be the recommendation of the minority leader of the House of Representatives.

Sec. 15. Section 104 of public act 01-9 of the June special session is repealed and the following is substituted in lieu thereof (*Effective July 1, 2002*):

The Commissioner of Social Services shall, within available appropriations, make information available to senior citizens and disabled persons concerning any pharmaceutical company's drug program for indigent persons by utilizing the ConnPACE program, the CHOICES health insurance counseling and assistance program, as defined in section 17b-427a, and Infoline of Connecticut to deliver such information. The commissioner, with advice from the Affordable Prescription Drug Board established pursuant to section 10 of this act, shall coordinate state public assistance health plan benefits through use of such programs, and shall work with the pharmaceutical manufacturers to facilitate the use of a single application form for such programs.

Sec. 16. (NEW) *(Effective July 1, 2002)* There is established a grant program to be administered by the Department of Social Services to fund the initial costs of implementing an affordable prescription drug program through federally qualified health centers. Such initial costs may include any equipment and other capital improvements and the first year salaries for additional staff associated with the program. Any federally qualified health center may apply to the Commissioner of Social Services for funds to begin such program. Any federally qualified health center that accepts a grant pursuant to this section

shall agree to offer prescription drugs to people who obtain health services at the health center at a price not exceeding one hundred ten per cent of the cost of such prescription drug to the health center. The commissioner shall adopt regulations, in accordance with chapter 54 of the general statutes, to implement this section.

This act shall take effect as follows:	
Section 1	*July 1, 2002*
Sec. 2	*July 1, 2002*
Sec. 3	*July 1, 2002*
Sec. 4	*July 1, 2002*
Sec. 5	*July 1, 2002*
Sec. 6	*July 1, 2002*
Sec. 7	*July 1, 2002*
Sec. 8	*July 1, 2002*
Sec. 9	*July 1, 2002*
Sec. 10	*July 1, 2002*
Sec. 11	*July 1, 2002*
Sec. 12	*July 1, 2002*
Sec. 13	*July 1, 2002*
Sec. 14	*July 1, 2002*
Sec. 15	*July 1, 2002*
Sec. 16	*July 1, 2002*

HS *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Fund-Type	Agency Affected	FY 03 $	FY 04 $
GF - Cost & Revenue	Social Services, Dept.	See Below	See Below
GF - Cost & Revenue	Consumer Protection, Dept.	See Below	See Below
GF - Cost	Legislative Mgmt.	Potential	Potential
GF - Cost	Public Health, Dept.	Significant	Significant
GF - Cost	Attorney General	Minimal	Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

This bill makes various changes regarding pharmaceutical benefit programs administered by the Department of Social Services (DSS) and related issues. These changes and their associated fiscal impacts are as follows:

CONNPACE PART B (Sections 1 - 7)

The bill establishes a ConnPACE Part B program as an adjunct to the currently authorized Connecticut Pharmaceutical Assistance Program to the Elderly and the Disabled (ConnPACE) Program, which would be renamed ConnPACE Part A.

An estimated 210,000 persons would be eligible for the new Part B program, as defined under the bill. DSS would be authorized to recoup manufacturer's rebates approximating eighteen percent of the value of drugs purchased under the program as well as a $25 annual application fee from each new enrollee. These fees and rebates would offset the agency's administrative costs and support a $6.15 pharmacist

incentive fee paid for each prescription dispensed under the ConnPACE Part B program. Actual costs and offsetting revenues would be dependent upon the number of individuals availing themselves of this new benefit which cannot be determined at this time.

EDUCATIONAL OUTREACH TO PHYSICIANS (Section 8)

This section requires DSS to expand its ConnPACE educational outreach program to include all physicians in Connecticut. The agency will have to print and mail information packets to approximately 12,700 physicians. This will result in FY 03 costs ranging from $40,000 - $50,000. In subsequent years it is assumed that these costs would fall to $15,000 - $20,000 as previously contacted physicians would receive only program updates at lesser cost. No funding has been included within sHB 5019 (the Revised FY 03 Appropriations Act, as favorably reported by the Appropriations Committee) for this purpose.

MEDICAID WAIVER APPLICATION (Section 9)

It is anticipated that DSS will be able to submit the required waiver application within its anticipated budgetary resources. Should the Centers for Medicare & Medicaid Services grant such a waiver, the state would receive federal financial participation of fifty percent of eligible costs.

AFFORDABLE PRESCRIPTION DRUG BOARD (Sections 10,12)

The bill establishes an Affordable Prescription Drug Board, which would be charged with disseminating pharmaceutical pricing information to all retail pharmacies in the state as well as issuing an annual report to the General Assembly. No appropriation has been provided for the Board within sHB 5019. It is unclear which agency (DSS or the Office of Legislative Management) would be responsible for the printing and mailing costs for this annual report, which might fall in the $5,000 - $7,000 range. There are 622 retail pharmacies in Connecticut.

To the extent that members of the General Assembly are appointed to the Board, the Office of Legislative Management (OLM) may incur a minimal cost. A total cost of less than $2,500 annually may result from mileage reimbursement to legislators due to traveling to and from board/committee meetings. Legislators are currently reimbursed 36.5 cents per mile. Considering that legislators may be traveling to the Capitol on other legislative business, any additional cost due to an increased number of reimbursed trips could be handled within the anticipated budgetary resources of the office.

The bill requires manufacturers of prescription drugs sold in the state to file a report with the Affordable Prescription Drug Board. The Board must then file such reports with the General Assembly. It is anticipated that DSS can provide staff support to the Board, post the schedule of prices it compiles upon its website and facilitate the submittal of information filed by manufacturers to the General Assembly within its normally budgeted resources.

REPORT TO THE LEGISLATURE (Section 10)

The bill requires DSS, in consultation with the Department of Consumer Protection to submit a report to the Affordable Prescription Drug Board and the General Assembly by September 1, 2002 and annually thereafter on options for lowering drug prices. The Commissioner of Consumer Protection will appoint the director of the Drug Control Division to provide consulting services to the Commissioner of Social Services in the preparation of the report and thus the DCP will incur no fiscal impact. It is anticipated that DSS will be able to comply with this requirement within its anticipated budgetary resources.

Additionally, it requires the chair-persons and ranking members of the committees of cognizance (presumably Aging, Appropriations and Human Services) to attend a public hearing before the commencement of each year's legislative session to review this report. This will generate minimal costs to OLM for mileage reimbursement for these twelve legislators.

DEPARTMENT OF PUBLIC HEALTH GRANTS (Section 11)

An indeterminate significant cost will be incurred by the Department of Public Health to the extent that it enters into contracts with nonprofit organizations to educate and assist residents with purchasing prescription drugs at the lowest possible cost. The bill requires bids for "one or more grants" to be solicited. No funding has been included within sHB 5019 for these grants.

LICENSING OF PHARMACEUTICAL MARKETERS & MANUFACTURERS (Section 13)

Section 13 requires the Commissioner of Consumer Protection to license people engaged in "pharmaceutical marketing." Beginning on July 1, 2003 licensees must disclose the value, nature and purpose of any gifts, fees or financial transactions with any of the health care facilities. The bill also allows the Commissioner to deny, suspend or revoke the license if a person violates the provisions of this bill or regulations adopted under the bill. The commissioner may charge a $500 annual licensing fee. Since this is a new program for the department, its passage could create the need for additional staff and related expenses.

The bill establishes civil penalties for violation of its pharmaceutical marketing and licensure requirements. The Commissioner of Consumer Protection may request that the Attorney General (AG) bring an action to collect such a fine. There are few such violations anticipated. Consequently, the revenue from these fines is expected to be minimal. The minimal cost associated with bringing these actions can be absorbed by the AG within available appropriations.

A violation of provisions of this section is deemed an unfair trade practice. Under the Unfair Trade Practices Act, the Department of Consumer Protection (DCP) has two methods for resolving complaints: 1) formal administrative hearings, or 2) forwarding the complaint to the Attorney General's office for litigation. If most of the cases are handled administratively by DCP, the workload increase to

the Office of the Attorney General is expected to be minimal and can be handled within the agency's anticipated budgetary resources. Under the Unfair Trade Practices Act, civil penalties can be imposed for violations. The extent of the additional revenue cannot be determined, since it would depend upon the number of violations which would occur and the amount of the penalties that would be imposed.

NORTHEAST LEGISLATIVE ASSOCIATION (Section 14)

This section requires the state to join Maine, Vermont, New Hampshire and Rhode Island as a participant in the Northeast Legislative Association on Prescription Drug Pricing. At this time the Association's by-laws do not require financial contributions from member states. However, other participating states have made payments ranging from $10,000 to $50,000. The Association's budget is approximately $100,000 annually. Should the Joint Committee on Legislative Management deem it appropriate to make a contribution, a cost of $25,000 - $35,000 might be expected. It is uncertain whether the Office of Legislative Management would incur travel costs for any of the six Connecticut representatives who might attend out-of-state meetings.

Future implications of membership in the Association are uncertain. To date, the other states have pursued plans to create a regional prescription drug purchasing pool, having as its goal the provision of coverage to Medicaid and Medicare beneficiaries, state employees, retirees and their dependents, those without access to pharmaceutical coverage and others. They have also solicited contract bids from pharmaceutical benefits managers to oversee such a purchasing pool.

INFORMATION REGARDING DRUG PROGRAMS FOR INDIGENT PERSONS (Section 15)

It is anticipated that DSS will be able to collaborate with pharmaceutical manufacturers to facilitate development of a single application form for assistance programs to indigent persons within

the agency's normally budgeted resources. This assumes that manufacturers will make the standardized form available to interested parties and not the department.

FEDERAL QUALIFIED HEALTH CENTER GRANTS (Section 16)

No funding has been included under within sHB 5019 to allow DSS to support grants to implement affordable prescription drug programs through federally qualified health centers. It is anticipated that the cost of any such effort would be significant in magnitude.

The preceding Fiscal Impact statement is prepared for the benefit of the members of the General Assembly, solely for the purposes of information, summarization and explanation and does not represent the intent of the General Assembly or either House thereof for any purpose.

OLR Bill Analysis
sHB 5639

AN ACT CONCERNING LOWER DRUG COSTS FOR CONSUMERS AND THE STATE

SUMMARY:
This bill:

1. creates a Part B component in the Connecticut Pharmaceutical Contract to the Elderly and Disabled (ConnPACE) program, and renames the existing program Part A;
2. sets income limits for Part B at 400% of federal poverty level (FPL) for people over age 65 and disabled people and 300% of FPL for people under age 65 who are not disabled, with automatic annual increases in these income limits using the higher of two inflation indices;
3. allows applicants for Part B to deduct prescription drug expenses from income in eligibility determinations (not a feature of Part A);
4. directs the Department of Social Services (DSS) commissioner to apply for a federal waiver to run the Part B program, which allows enrollees to purchase drugs at the price the state pays under the Medicaid program;
5. establishes a 21-member Affordable Prescription Drug Board and prescribes its duties;
6. requires the Department of Social Services (DSS) commissioner, with the Affordable Prescription Drug board's advice, to coordinate public assistance health benefits through use of manufacturers' assistance programs for indigent people and to facilitate a single form for such programs;
7. establishes a Department of Public Health grant program for educating consumers on the purchase of drugs at the lowest possible price;
8. requires drug manufacturers whose drugs are sold in the state to file annual reports with the new Affordable Prescription Drug Board that disclose their expenses for advertising and promoting drugs sold in Connecticut;
9. requires licensing of people who engage in pharmaceutical marketing;

10. requires Connecticut to participate in the Northeast Legislative Association on Prescription Dug Pricing; and
11. establishes a DSS-administered grant program to fund the initial costs of implementing an affordable prescription drug program through federally qualified health centers.

EFFECTIVE DATE: July 1, 2002

CONNPACE

New Part B - Income Limits

The bill creates ConnPACE Part B for people who do not qualify for the existing ConnPACE program, renamed Part A by the bill (see BACKGROUND), have no other insurance to cover their prescription drugs, and meet certain income limits. Part B replaces the plan for ConnPACE Part B authorized by PA 00-2, June Special Session, but never implemented.

The bill sets income limits for the new Part B as a percentage of federal poverty level (FPL) guidelines:

Category	**Single Annual Income Limit**	**Married Couple Annual Income Limit**
People age 65 or over and younger disabled people	400% of FPL* for a one-person household	400% of FPL for a two-person household
Other uninsured people under age 65	300% of FPL for a one-person household	300% of FPL for a two-person household

*Federal poverty levels change every year, usually in March. For 2002, they are $8,860 for a one-person household and $11,940 for a two-person household. 300% of FPL is $26,580 for a one-person household and $35,820 for a two-person household; 400% is $35,440 for a one-person household and $47,760 for a two-person household.

Under current law, ConnPACE income limits increase each January 1, based on Social Security cost-of-living adjustments, rounded to the nearest $100. The bill continues this method for Part A, but for the new Part B, it requires the DSS commissioner to adopt regulations by January 1, 2003 to adjust the limits annually by the higher of the percentage increase in Social Security benefits or the FPL, rounded to

the nearest $100.

Part B—Drug Price and Pharmacist Participation Fee

Under the bill, enrollees in Part B can purchase prescription drugs at the average wholesale price, reduced by 12%, or some other price that would be calculated under Medicaid.

DSS pays a participation incentive fee to pharmacists for each Part B prescription they fill. The fee must be at least 150% of the Medicaid dispensing fee ($4.10), or $6.15.

Currently in the Medicaid program, DSS pays pharmacists, in addition to the $4.10 dispensing fee, the lower of (1) the average wholesale price, less 12%, (2) the Center for Medicare and Medicaid Services' (CMS) federal upper limit price, or (3) the usual and customary charge for every drug purchased by program enrollees. The 12% discount applies to brand-name drugs and generic drugs that are not included on the CMS list.

Part B—Other Applicant Requirements

Applicants for Part B cannot be eligible for Part A or have any other insurance available to them. But if they expect to exhaust their coverage, they can get assistance once this occurs and can apply beforehand. This already applies to Part A enrollees.

Enrollees must pay a $25 annual registration fee, as is already the case in Part A.

The bill applies to Part B other existing Part A provisions, such as (1) requiring pharmacists to dispense generics, unless physicians indicate otherwise; (2) contracting with a fiscal intermediary to administer the program; and (3) a six-month residency requirement. It extends the appeal rights in ConnPACE to Part B. It also includes Part B in the DSS ConnPACE educational outreach program and widens the program's target groups to include physicians. (Currently, the outreach efforts are aimed at pharmacies and the public, emphasizing reaching the elderly and disabled through various relevant local and statewide agencies.) Further, it appears to include Part B in the current law that authorizes the DSS commissioner to establish a prior authorization plan for certain drugs purchased by Medicaid, State-

Administered General Assistance (SAGA), general assistance, or ConnPACE enrollees.

Waiver for Part B—New Drug Rebates

The bill directs the DSS commissioner to apply for a federal waiver to conduct the Part B program. If the state receives the waiver, the bill requires the state to contribute at least $1 to the cost of each prescription. (The bill does not specify to whom the state must pay this $1.)

By expanding the reach of Medicaid to include Part B enrollees, the bill requires drug manufacturers to provide additional rebates to the state. (It appears that the state would be leveraging only the rebates and not full Medicaid coverage for enrollees. Federal law generally only requires manufacturers to have rebate agreements with states as a condition of receiving Medicaid payments for most of their drugs (42 USC § 1396r-8)). These rebates must be used to offset the costs of the bill's participation incentive fee (see BACKGROUND). The waiver must include the full range of drugs available under Medicaid.

The bill makes participation by drug manufacturers in one part of the program contingent on their participation in the other. Connecticut law already requires manufacturers to give the state a rebate for each of their drugs purchased by recipients under the existing ConnPACE program, which becomes Part A under the bill.

AFFORDABLE PRESCRIPTION DRUG BOARD

The bill establishes a 21-member Affordable Prescription Drug Board, consisting of the DSS commissioner or her designee and 20 other members appointed by the governor and legislative leaders as follows:

Appointing Authority	Appointees	Special Provisions
House speaker	3	One must be a Connecticut-licensed pharmacist
Senate president pro tempore	3	One must represent a pharmaceutical company with manufacturing operations in Connecticut
House majority leader	3	One must represent a

		Connecticut-licensed hospital
House minority leader	3	One must be a Connecticut-licensed physician
Senate majority leader	3	One must represent a Connecticut-licensed health insurer
Senate minority leader	3	One must be a Connecticut-licensed health care provider with prescriptive authority, other than a physician.
Governor	2	None

At least one member chosen by each appointing authority must be a consumer who purchases prescription drugs and who is not a health care provider, pharmacist, or someone employed or formerly employed by a pharmaceutical drug manufacturer, distributor, or pharmacy. At the board's first meeting and then annually, the members must elect two cochairpersons. DSS must provide the staff needed to perform the board's duties and functions.

By January 1, 2003, the board must publish the wholesale price, the Canadian wholesale price, the federal Supply Schedule price, retail prices in Connecticut, the prices charged to other government agencies, health care facilities, health insurance companies and other purchasers, and whatever other information the board finds relevant for the 50 prescription drugs with the highest sales volume for the ConnPACE Part A and B programs.

The board must distribute the schedule to all retail pharmacies in the state and the DSS commissioner must post it on the department's website.

The DSS commissioner, in consultation with the Department of Conssumer Protection (DCP) commissioner, must submit a report to the Affordable Prescription Drug Board and the General Assembly by September 1, 2002, and annually thereafter, detailing state options for lowering drug prices for the state, businesses, and consumers. The report must detail (1) major strategies used in other states to lower drug prices and their effects on health access, including such strategies as negotiating supplemental Medicaid rebates, bulk purchasing in-state or through multi-state pools, accessing Medicaid rebates for consumers and pharmacies through federal Medicaid waivers,

variations of pharmacy assistance programs and benefits offered, expanding state and private consumer assistance and discount programs; (2) strategies used to access federal pricing schedules and expand prescription purchasing programs for federally qualified health centers and other qualified community health entities (42 USC § 256b); (3) local programs to provide discounts to subsets of residents; and (4) any other findings and recommendations the commissioner deems appropriate. The report must include comment on available processes for public input for each strategy highlighted. The board, together with the chairpersons and ranking members of the legislative committees of cognizance must conduct a public hearing before the beginning of the legislative session to evaluate the report's option.

DRUG PURCHASING EDUCATION GRANT

By October 1, 2002, the bill requires the Department of Public Health (DPH) commissioner to request proposals to award one or more grants to community health centers, free health care clinics, and other nonprofit organizations to educate and help state residents buy drugs at the lowest possible cost.

The grants can be awarded for (1) identifying and organizing pharmacies, clinics, physicians, and other health care providers who can assist residents in the prescribing and purchasing of prescription drugs at the lowest possible price; (2) assisting and organizing the communications, prescriptions, purchasing, transportation, and other activities needed to enable such purchases to occur; and (3) any other proposal designed to (a) educate residents about low cost prescription drug opportunities at the state or federal level or (b) permit them to purchase prescriptions at the lowest possible price. The commissioner must review the proposals. Once he reviews the proposals, with the Affordable Prescription Drug Board's recommendation, he can award the grants. (The bill does not provide funding for this program.)

The proposals are awarded only if (1) they are submitted by October 1, 2002, (2) they can be implemented by December 31, 2002 and are to last for at least one year, and (3) the grantee can ensure that any prescription drug purchase is approved by a retail pharmacist in the state, who gets paid an approval fee equal to the Medicaid dispensing fee ($4.10).

DRUG MANUFACTURER REPORTING OF ADVERTISING AND PROMOTIONAL COSTS

Starting March 31, 2003, the bill requires manufacturers of prescription drugs sold in Connecticut during the previous calendar year to file an annual report with the Affordable Prescription Drug Board. The report must disclose aggregate advertising and promotional expenses. Promotions include free samples, media events, gifts, trips, conferences, or meals. Manufacturers must list expenses for promotions by these and other categories the manufacturers determine appropriate. The board must prescribe the form for the report.

The board must, within 30 days of receiving the report, file it with the Public Health and Human Services committees.

PHARMACEUTICAL MARKETING LICENSE

The bill requires people employed by or under contract to a pharmaceutical manufacturer and the manufacturer to obtain a license from the Department of Consumer Protection (DCP) commissioner before they engage in "pharmaceutical marketing." The bill allows the commissioner to deny, suspend, or revoke any such license if the person violates this bill or regulations adopted under it. The commissioner may charge a $500 annual licensing fee.

The bill defines "pharmaceutical marketing" as engaging in pharmaceutical detailing, promotional activities or other marketing of prescription drugs in Connecticut to any hospital, nursing home, health care provider, pharmacist, health benefit plan administrator, or any other person authorized to prescribe, dispense, or purchase prescription drugs. But the term does not include a wholesale drug distributor or the distributor's representative promoting or otherwise marketing the distributor's services in connection with the drug.

The bill bars anyone licensed under this provision from engaging in any unfair or deceptive trade or practice under the state Unfair Trade Practices Act (see BACKGROUND). It requires licensees to disclose to the DCP commissioner, annually starting July 1, 2003, the value, nature, and purpose of any gifts, fees, or financial transactions with any of the health care facilities and providers listed above in connection with pharmaceutical marketing. Licensees must also disclose, upon request, to any person any information they have on the financial and medical risks, costs and benefits of each marketed prescription drug, and its relative risks, costs, and benefits compared

to other less expensive drugs in the same therapeutic class.

The bill requires the DCP commissioner to adopt regulations to implement these provisions. It imposes civil penalties of up to (1) $10,000 on anyone engaging in pharmaceutical marketing without a license and (2) $5,000 on those who engage in unfair or deceptive trade practices or fail to make the required disclosures. It authorizes the attorney general, at the commissioner's request, to bring an action in Superior Court to collect such fines.

NORTHEAST LEGISLATIVE ASSOCIATION ON PRESCRIPTION DRUG PRICING

The bill requires the state to participate in the Northeast Legislative Association on Prescription Drug Pricing. It requires the state's representatives to the association to be the Affordable Prescription Drug Board's cochairpersons, as well as two people appointed by the Senate president pro tempore and two appointed by the House speaker. One of the House speaker's and Senate president pro tempore's appointments must be people recommended by the respective chamber's minority leader.

FEDERALLY QUALIFIED HEALTH CENTER PRESCRIPTION DRUG PROGRAM

The bill establishes a DSS-administered grant program to fund the initial costs of implementing an affordable prescription drug program through federally qualified health centers. These initial costs can include equipment and other capital improvements and first-year salaries for additional staff associated with the program. It allows any federally qualified health center to apply to the DSS commissioner for funds to begin such a program. It requires any such center that accepts a grant to agree to offer prescription drugs to people who obtain health services there at a price not more than 110% of the center's cost. The bill requires the commissioner to adopt regulations to implement the grant program. The bill provides no funding for this program.

BACKGROUND

Part A

The bill renames the current ConnPACE program Part A. But otherwise it makes no changes in the basic program, which helps

lower-income seniors and younger disabled people pay for prescription drugs if they do not qualify for Medicaid or have health insurance that pays for prescriptions. Current annual income limits are $15,600 for single people and $18,700. But legislation passed last year (1) increased these caps to $20,000 and $27,100, respectively, beginning April 1, 2002 and (2) scheduled a second increase to $25,800 and $34,800, on July 1 or later if the state obtains federal approval for a Medicaid waiver. Currently, enrollees pay a $25 annual fee and a $12 co-payment for each prescription. The waiver proposal contains a $20 copayment for people who become eligible at the higher income levels because of the July 1 increase. DSS reimburses the pharmacy using the Medicaid formula.

Related Law: Prior ConnPace B Plan

Section 29 of PA 00-2, June special session, required the DSS Commissioner to come up with a cost-neutral plan for administering a ConnPace Part B program. DSS submitted the plan in February 2001. The plan assumed the state would receive additional manufacturer rebates, which would be used to pay (1) pharmacists a participation incentive fee and (2) administrative costs. Although the ongoing program was expected to be cost-neutral, the plan estimated start-up costs. The act required DSS to run the program only after the committees of cognizance agreed that cost-neutrality had been met. The committees took no action on the plan.

Connecticut Unfair Trade Practices Act

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than $5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to bring suit. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to $5,000 for willful violations and $25,000 for violation of a restraining order.

Federally Qualified Health Centers

"Federally qualified health centers" are community health centers meeting specific federal criteria in order to receive federal funding. They can establish and operate in-house pharmacies. The federal government sets what is called the "Federal Supply Schedule" for drugs used in Medicare, veterans' hospitals and other federally funded programs**.** These programs will not buy any drug from any company unless it allows all its drugs to be purchased by the federal supply schedule.

COMMITTEE ACTION

Human Services Committee

Joint Favorable Substitute
Yea 11 Nay 7